

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	8:03CR7
)	
JOHN E. RYAN,)	REPORT AND
)	RECOMMENDATION
)	
Defendant.)	

This matter is before the court on defendant's MOTION TO DISMISS FOR WANT OF PROSECUTION (#55) pursuant to Fed. R. Crim. P. 48(b)(3). The motion is based on the substantial delays in conducting the defendant's competency evaluation. The record in this case shows that the defendant is not competent to stand trial and is unlikely to become competent to stand trial on this indictment. Furthermore, the government has filed a response (#56) agreeing that the indictment should be dismissed.

I find that dismissal is appropriate under Rule 48(b)(3). Considering the record and the defendant's condition, I find that the dismissal should be with prejudice.

IT THEREFORE IS RECOMMENDED that defendant's MOTION TO DISMISS FOR WANT OF PROSECUTION (#55) be granted and that the indictment be dismissed with prejudice.

DATED July 7, 2005.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge